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October 26, 2011

TruePosition, Inc. v. LM Ericsson Telephone Company, et al.
Civil Action No. 11-4574 (RK)

Dear Judge Kelly:

I am counsel for Qualcomm Incorporated in the above captioned matter and write to bring to the Court's attention recent supplemental authority that we believe is relevant to Qualcomm's pending Motion to Dismiss.

In *Burtch v. Milberg Factors, Inc.*, decided October 24, 2011, the Third Circuit affirmed the District of Delaware's holding that a complaint that alleged parallel conduct, but failed to allege any "factual detail in the Complaint that makes it any *more* likely that the Defendants' parallel conduct was the result of an unlawful agreement than, instead, the result of independent rational, and wholly lawful decisions by each Defendant", did not satisfy the "plausibility" standard of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). *Burtch v. Milberg Factors, Inc.*, No. 10-2818, --- F.3d ---, 2011 WL 5027511, at *13 (3d Cir. Oct. 24, 2011) (emphasis added). The Court of Appeals held that where the defendants, factors in the garment industry, each had an independent motive to withhold credit from plaintiff—a garment retailer with declining sales—the complaint did not support a plausible inference of a conspiracy in violation of Section 1 of the Sherman Act, even where the defendants were alleged to have shared information

regarding the plaintiff's credit-worthiness. *Id.* at *14 (stating that allegations of motive based on "market behavior are precisely the legally insufficient facts we have cautioned against using as circumstantial evidence of an agreement").

Respectfully,

A handwritten signature in black ink, appearing to read "Roger G. Brooks". The signature is fluid and cursive, with the first name "Roger" and last name "Brooks" clearly distinguishable.

Roger G. Brooks

Honorable Robert F. Kelly
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